

These are the tentative rulings for civil law and motion matters set for Tuesday, October 29, 2013, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday, October 28, 2013. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

1. M-CV-0056945 Asset Acceptance, LLC vs. McKenzie, Stephanie

Plaintiff's Motion to Vacate Judgment is granted. The judgment entered against defendant Stephanie McKenzie on August 2, 2013 shall be vacated.

2. M-CV-0059141 1735 Mary Rose Lane, Lincoln, CA - In Re the Petition of

Appearance required on October 29, 2013 at 8:30 a.m. in Department 40.

3. S-CV-0025882 Ruiz, Elias, et al vs. Vanderbeek Motors, Inc.

The tentative ruling on the Motion for Attorneys' Fees and Motion to Tax Costs will be faxed directly to the parties.

4. S-CV-0029097 Pique, Bridget vs. Sutter Pediatrics Roseville, et al

The Motion to be Relieved as Counsel by Jeffrey S. Mitchell and Mitchell Law Group is granted, effective upon the filing of proof of service of the signed order on plaintiff and all other parties who have appeared in this action.

5. S-CV-0029141 Cooley, David, et al vs. Centex Homes

The Motion to Serve Secretary of State is continued to October 31, 2013 at 8:30 a.m. in Department 40.

6. S-CV-0029443 Garten, Annette vs. Applebee's Services, Inc.

Defendant's Motion for Protective Order

Defendant's Motion for Protective Order is denied.

In response to plaintiff's Request for Admissions, Set Two, Request for Production of Documents, Set Two, Request for Production of Documents, Set Three, Special Interrogatories, Set Two, and Special Interrogatories, Set Three, served between August 2-15, 2013, defendant moves for a protective order excusing it from responding to any of the subject discovery requests, on the grounds that responding to the discovery would result in undue burden and expense to defendant.

As a preliminary matter, the court finds that the motion was timely made. Code of Civil Procedure sections 2030.090, 2031.060 and 2033.080 require a motion for a protective order to be made "promptly." If a motion for a protective order is not made before expiration of the time to serve responses to the subject discovery, objections to the discovery may be waived. In this case, plaintiff agreed that responses could be served as late as September 26, 2013. Because defendant filed its motion for a protective order on September 26, 2013, it did not waive objections to the subject discovery. The filing of the motion on the last day to serve responses to the subject discovery was sufficient to satisfy the requirement that the motion be made "promptly." The court also finds that the parties adequately met and conferred in an attempt to resolve the issues underlying this motion.

In connection with the Request for Admissions, Set Two, and Special Interrogatories, Sets Two and Three, plaintiff served declarations regarding the necessity for discovery in excess of the limits imposed by the Code of Civil Procedure. Where discovery exceeds the amounts permitted, and is served with a declaration of necessity, the burden is on the propounding party to prove the number of questions is justified if the responding party seeks a protective order. Code Civ. Proc. §§ 2030.040(b); 2033.040(b). Plaintiff provides ample justification for the need to serve discovery requests in excess of the number of requests permitted under the Code of Civil Procedure, given existing issues of the identity of the person who purportedly placed the serving tray on the ground, the fact that video surveillance from the date in question was not retained, defendant's policies and procedures relating to safety and training, and injuries claimed by plaintiff as a result of the incident.

Defendant does not set forth specific facts demonstrating that responding to the discovery would present an unreasonable burden. *West Pico Furniture Co. of Los Angeles v. Superior Court* (1961) 56 Cal.2d 407, 417. Discovery poses an undue burden if the inconvenience and expense of responding clearly outweigh the benefits likely to be obtained if the discovery is answered. Code Civ. Proc. § 2019.030(a). Defendant argues that the sheer number of discovery requests is unwarranted in what it characterizes as a non-complex slip and fall case, but provides no other information regarding why providing responses to the discovery requests would pose an unwarranted burden in terms of time or expense in this particular case.

Defendant also admits that it previously agreed that it would provide responses or information sought by some of the requests, but because plaintiff refused to limit the number of outstanding discovery requests, defendant now seeks to be excused from having to provide any responses at all. It is an abuse of discretion to strike an entire set of discovery requests if any question therein is proper. *West Pico Furniture Co. of Los Angeles v. Superior Court, supra*, 56 Cal.2d at 419.

While there may be some overlap in terms of information that has previously been provided by defendant through other means, defendant fails to demonstrate good cause for an order excusing it from responding to the any of the subject discovery requests.

Plaintiff is awarded sanctions against defendant in the amount of \$900. Code Civ. Proc. §§ 2030.090(d); 2031.060(h); 2033.080(d).

Motions to Compel

Plaintiff's Motion to Compel Responses to Request for Admissions, Set Two, Motion to Compel Responses to Special Interrogatories, Set Two, Motion to Compel Responses to Special Interrogatories, Set Three, Motion to Compel Responses to Request for Production of Documents, Set Two, and Motion to Compel Responses to Request for Production of Documents, Set Three, are granted.

Plaintiff's five separate motions to compel responses relate to the same discovery requests at issue in defendant's motion for a protective order. In light of the ruling on the motion for a protective order, each of plaintiff's motions to compel is granted. However, because defendant filed its motion for a protective order prior to the expiration of its deadline to serve responses to the discovery, objections to the individual requests have not been waived.

Plaintiff's request for sanctions is denied. In light of the filing of its motion for a protective order, defendant was substantially justified in opposing plaintiff's motions. Defendant shall serve full and complete responses to the subject discovery by no later than November 12, 2013.

7. S-CV-0031108 Calderon, Arturo vs. Lankford, Gary, et al

On October 1, 2013, on the court's own motion, a motion to dismiss was set for October 29, 2013, based on plaintiff's death in April 2013, and the failure to substitute a representative of the estate of Arturo Calderon. The parties were ordered to submit briefs with respect to the motion to dismiss by no later than October 15, 2013. Plaintiff submitted no briefings in support of or in opposition to the motion. Upon consideration of all documents in the court's file, the court finds that dismissal of this action is warranted. The complaint shall be dismissed without prejudice.

8. S-CV-0031557 Gluz, Jacob vs. Lebastchi, Steve, et al

Cross-Defendants Elite Realty Group, Inc. and Vadym Sagadin's Motion for Determination of Good Faith Settlement is granted. Based on the factors set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling parties' proportionate share of liability for plaintiff's injuries, and therefore is in good faith within the meaning of Code of Civil Procedure sections 877 and 877.6.

If oral argument is requested, moving parties' request for telephonic appearance is granted. Effective July 1, 2013, all telephonic appearances must be arranged through CourtCall.

9. S-CV-0031817 Bank of America, N.A. vs. Hanh Thi My Tran, et al

Defendant's Motion to Set Aside Default and Default Judgment is denied.

The court is empowered to relieve a party from a default or default judgment taken against her through her mistake, inadvertence, surprise or excusable neglect. Code Civ. Proc. § 473(b). However, an application for discretionary relief must be made within a reasonable time, and in no case exceeding six months after entry of default. *Id.* In this case, default was entered against defendant on November 13, 2012. Defendant's time to move for relief under Code of Civil Procedure section 473(b) was not extended by the subsequent delay in obtaining the default judgment. *Rutan v. Summit Sports, Inc.* (1985) 173 Cal.App.3d 965, 970. Accordingly, the court has no jurisdiction to grant defendant's motion to set aside the default. *Davis v. Thayer* (1980) 113 Cal.App.3d 892, 901.

Defendant also fails to demonstrate excusable neglect in her failure to timely respond to the complaint. Defendant admits being served with the summons and complaint, but states no efforts to determine if in fact the documents were fake, which could easily have been ascertained by contacting the court. Finally, defendant fails to attach a copy of her proposed responsive pleading, as required. Code Civ. Proc. § 473(b).

10. S-CV-0032113 Rose, Stephen, et al vs. Lennar Renaissance, Inc.

The Motion to Consolidate was continued to November 21, 2013 at 8:30 a.m. in Department 40.

11. S-CV-0032865 Acocks, Michael, et al vs. Ford Motor Company

The Motion re PMK Deposition is dropped. No moving papers were filed.

12. S-CV-0032987 Sanchez, Victor vs. Sierra Pacific Industries

The Motion to be Relieved as Counsel by Stephen G. Pongratz and Beyer, Pongratz & Rosen is granted, effective upon the filing of proof of service of the signed order on plaintiff and all other parties who have appeared in this action.

13. S-CV-0033227 Scott, Janet vs. Crossmark, Inc., et al

The Demurrer to Answer is dropped as moot. An amended answer has been filed.

14. S-CV-0033229 Bechtold, Diane vs. Crossmark, Inc., et al

The Demurrer to Answer is dropped as moot. An amended answer has been filed.

15. S-CV-0033523 Sheryl Hayden vs. OneWest Bank FSB

Defendant OneWest Bank, FSB's ("OneWest's") request for judicial notice is granted. OneWest's Demurrer to Plaintiff's Complaint is overruled.

Plaintiff alleges a single cause of action under the California Homeowner Bill of Rights, on the grounds that defendant wrongfully took steps to conduct a trustee's sale of subject property while a valid first lien loan modification was pending. Pursuant to Civil Code section 2923.6, if a borrower submits a complete application for a first lien loan modification, the mortgage servicer, mortgagee, trustee, beneficiary or authorized agent may not record a notice of default or notice of sale, or conduct a trustee's sale, while the modification application is pending.

Plaintiff is alleged to be a borrower under the statute who submitted a complete application for a first lien loan modification. OneWest asserts that plaintiff did not constitute a borrower as defined by Civil Code section 2920.5 because she was not eligible for a loan modification, as a grant deed recorded in May 2010 indicates that the property was deeded to third parties. However, the court cannot conclude as a matter of law that plaintiff was not entitled to a loan modification under these circumstances. Based on the allegations of the complaint, plaintiff adequately alleges a violation of the Homeowner Bill of Rights.

OneWest shall file and serve its answer to the complaint by no later than November 19, 2013.

If oral argument is requested, OneWest's request for telephonic appearance is granted. Effective July 1, 2013, all telephonic appearances must be arranged through CourtCall.

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